

KEEFE BARTELS

TRIAL ATTORNEYS

January 8, 2016

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VIA ECF

Hon. Charles F. Breyer, U.S.D.J.
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102

**Re: In re Volkswagen "Clean Diesel" Marketing, Sales Practices and
Products Liability Litigation, 15-MD-2672**

John E. Keefe, Jr.^{1,3}

Patrick J. Bartels⁴

John E. Gregory, Jr.^{1,5}

Application of John E. Keefe, Jr. for Plaintiffs' Steering Committee

Dear Judge Breyer:

Joshua S. Kincannon⁶

Liana M. Nobile

Jennifer Harwood Ruhl¹⁵

Stephen T. Sullivan, Jr.⁴

I am co-counsel to Plaintiffs, Duc Truong, Eric Kelly, Dorothy Fajerman, and Camille Zenobia, in *Truong, et al., v. Volkswagen Group of America, Inc., et al.*, 15-cv-07577 (D. N.J.). Pursuant to Pretrial Order No.2, I respectfully submit this letter application for appointment to the Plaintiffs' Steering Committee.

Of Counsel:

John E. Keefe, Sr.

C. Judson Hamlin

(1) Professional Experience and Court Appointments

Counsel:

Dennis M. Baptista²

Vivianna Cosme-Bravo

Paul A. DiGiorgio

Frank R. DiMarzio

Glenn Kaplan

Craig H. Livingston^{1,2}

Certified Civil Trial Attorney¹

Certified Workers'

Compensation Attorney²

I am a founding member of Keefe Bartels, LLC and lead our firm's plaintiffs' personal injury, complex tort, consumer fraud and class action department. I am a Certified Civil Trial Attorney by the New Jersey Supreme Court, am AV rated by Martindale-Hubbell and currently serve as Second Vice President to the New Jersey State Bar Association. I am admitted to the Bar of New Jersey, U.S. District Court for the District of New Jersey, United States District Court for the Northern District of Florida, United States District Court for the District of Columbia, Third Circuit Court of Appeals, and the United States Supreme Court.

Admitted:

N.J., D.C., N.D.Fla.³

N.J., Pa.⁴

N.J., N.Y.⁵

N.J., Pa., N.D.Fla.⁶

I have had the privilege of being appointed by numerous federal and state courts to serve as Lead or Liaison/Local Counsel in diverse instances of significant corporate fraudulent misconduct. For example, and not by way of limitation, I served as Liaison Counsel in the national consumer fraud class action, *Talalai v. Cooper Tire & Rubber Co.*, MID-L-8830-00-MT, wherein we alleged Cooper Tire concealed that certain tires had a heightened risk of failure.¹ During this litigation, we coordinated and participated in simultaneous litigation in multiple federal and state courts, which resulted in a settlement after only

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¹ Allan Kanner, who is my co-counsel in this matter, served as Lead Counsel in *Talalai, supra*.

approximately one year of litigation and that was valued for more than one billion dollars to consumers.

I was Lead Counsel in one of the largest pollution class action cases in New Jersey, *Janes v. Ciba Geigy Corporation*, MID-L-1669-01-MT. During this ten-year litigation, we successfully appealed the matter's dismissal on statute of limitations grounds, participated in numerous evidentiary hearings and mediation sessions, and defended more than five motions to dismiss and to decertify the class. The settlement provided a hybrid of benefits to class members, including direct monetary payments for the diminution of value of their properties and the dedication of substantial green space between the members' properties and defendant's site, preventing any future development.

Most recently, I was Co-Lead Counsel in *Chaudhri v. Osram Sylvania, Inc.*, 11-cv-5504 (D. N.J.), wherein we alleged Sylvania fraudulently manipulated claims about the quality of its replacement automotive bulbs. During this litigation, we actively proceeded on dual litigation and mediation tracks. After extensive discovery of defendant and its third-party retailers and multiple mediation rounds, we reached a settlement allowing more than one million class members to receive an automatic payment without having to file a claim form. In approving the settlement, Judge Madeline Cox Arleo observed:

[F]rom Mr. Keefe's presentation this morning . . . class counsel have invested considerable time and resources in this matter, not just in pursuing this case vigorously from the start, but in retaining the proper experts and consultants . . . , and that careful consideration was given to damages ranges based on the product. It demonstrates that they have considerable experience in litigating these type[s] of complex class actions, and, on top of all their experience, it is also clear to me that it was really meaningful . . . to consumers.

[*Chaudhri v. Osram Sylvania, Inc.*, 11-cv-5504 (Mar. 20, 2015 D.N.J.), at T32-10-21 (reviewing proposed settlement during Fairness Hearing).]²

My resume is attached as Exhibit "A" to this letter.

(2) Names and Contact Information of Judges for Cases Identified in Category (1)

- A. *Chaudhri v. Sylvania Corporation*, Hon. Madeline Cox Arleo, U.S.D.J., (t) (973) 297-4903;
- B. *Janes v. Ciba Geigy Corporation*, Hon. Jamie D. Happas, P.J.S.C., (t) (732) 519-3627 and Hon. Marina Corodemus, J.S.C. (ret.), (t) (732) 603-0005.
- C. *Talalai v. Cooper Tire & Rubber Co.*, Hon. Marina Corodemus, J.S.C. (ret.), (t) 603-0005.

²

Upon request, the undersigned will provide the Court with the cited transcript.

(3-7) Willingness and Ability to Participate and Cooperate with Counsel

Throughout my career, I have worked with many of the attorneys now seeking to be named as Lead Counsel or to the Plaintiffs' Steering Committee. I have developed significant and positive relationships with these counsel, including Allan Kanner, who is my co-counsel in *Truong* and whom I support for Lead Counsel, Christopher Seeger and Michael Hausfeld. My courtesies and relationships, however, extend beyond just plaintiffs' counsel. I have obtained a reputation with defense counsel as being reasonable, honest and professional. As a reference, I offer the Hon. Stephen M. Orlofsky, U.S.D.J. (ret.), who represented Sylvania in *Chaudhri*.

I have sufficient resources to prosecute this litigation and am prepared to commit the anticipated substantial time and effort necessary to conclude this litigation favorably for the plaintiffs and class members. My time will not be spread thin by multiple competing MDLs, and I will forego opportunities in other cases, if selected in this case. Further, I am willing to serve as a member of the Plaintiffs' Steering Committee for any potential subcategory of plaintiffs.

(8) Other Factors for Leadership Position

Volkswagen has made significant admissions regarding its misconduct, and there are suggestions that the litigation is ripe for a quick settlement. Consequently, certain counsel and parties attempted to co-opt the litigation by interim appointments and settlement negotiations. My co-counsel and I have cautioned against hasty actions in our submissions to this Court. See *Plaintiffs' Response to Defendants' Status Report Submitted Pursuant to Pretrial Order No. 1*, Doc. 346 (requesting that court appoint Steering Committee before Feinberg settlement process initiated); *Interested Party Response to Transfer and Consolidate Pursuant to 28 U.S.C. 1407*, MDL No. 2672, Doc. 806 (urging JPML to transfer litigation to "court with significant experience in effectively and efficiently handling complex litigation and a clean slate").

Fair and reasonable resolution of this matter will require dedicated and diverse counsel that not only can utilize their varied experiences and skill sets but also who are ready to invest themselves and their firms substantially in this matter, even over an extended period of time. My experience as a trial lawyer and as a class action litigator exhibits the patience, efficiency, preparation, and unwavering dedication to provide fair compensation to victims of fraud. While early settlement discussions may be appropriate, my experience in dual track litigation and settlement negotiations in prior matters demonstrates a pragmatism that will benefit the sound administration of justice and serve Lead Counsel and the Steering Committee in competently completing their many and diverse responsibilities.

Respectfully submitted,

/s/ John E. Keefe, Jr.
JOHN E. KEEFE, JR.

cc: All Counsel of Record (via ECF)